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COE NEWNES/McGEHEE ULC,
THE COE MANUFACTURING COMPANY, and
BRIAN ESHER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RONALD W. McGEHEE, an individual;
and McGEHEE DEVELOPMENT
COMPANY, LLC, a California limited
liability company,

Plaintiffs/Counterdefendants,

vs.

CAE McGEHEE, INC., a California
corporation; COE NEWNES/McGEHEE
ULC, a Canadian unlimited liability
company; and DOES 1-50,

Defendants/Counterclaimant.

and Related Counterclaims.

Case No.: C-03-5145 MJJ

**~~PROPOSED~~ REVISED PROTECTIVE
ORDER RE CONFIDENTIAL
INFORMATION**

With reference to the Court's Order re Discovery Dispute Over Protective Order dated
May 19, 2004, and given the addition of new parties to this action (Defendants The Coe
Manufacturing Company and Brian Esher), the following Protective Order is entered for the

1 purpose of adding those parties' names to the Certification of Confidentiality referenced herein¹:

2 1. This Protective Order ("Order") shall govern the use and disclosure of all
3 information produced by or on behalf of any party, or by any third party who so chooses, in any
4 deposition, interrogatory, request for admission, document production, or any other disclosure or
5 discovery proceeding in this action. Information produced in discovery, including initial
6 disclosures, shall only be used for the purposes of preparing for and conducting this action
7 (including any appeals or retrials) and only as provided in this Order.

8 2.a. Confidential Information. The designation "Confidential Information" shall be
9 limited to information that is private, non-public information, a trade secret or other confidential
10 research, development or commercial information, and is generally treated as confidential or
11 proprietary by the designating party. "Confidential Information" may include non-public
12 information regarding inventions, patent rights, personnel data, or information obtained from
13 third parties pursuant to a non-disclosure agreement (however, the entry of this Order shall not
14 obligate a party to produce such information without the third party's express consent).

15 2.b. Confidential-Attorneys' Eyes Only Information. The designation "Confidential-
16 Attorneys' Eyes Only" shall be limited to information that is *highly sensitive* commercial or
17 competitive information, including information relating to (i) pricing and margin analysis; (ii)
18 inventory and unreleased products; (iii) customer identities (including the names of key contacts)
19 and customer product information; (iv) financial data and tax records; and (v) competitive
20 marketing plans or strategies. However, the designation "Confidential-Attorneys' Eyes Only"
21 may not be used for any information that relates to the "Optimizing Planer Invention" allegedly
22 developed by plaintiffs as described in the Complaint ¶¶ 15-16 (*see also* Second Amended
23 Complaint ¶¶ 23-24). The parties are hereby ORDERED to use the "Confidential-Attorneys'
24 Eyes Only" designation sparingly.

25 ¹ Except for the addition of The Coe Manufacturing Company and Brian Esher to the
26 Certification of Confidentiality in paragraph 5, this Revised Protective Order is substantively
27 identical to the Protective Order re Confidential Information that the Court entered on June 8,
28 2004. The parties agree that the June 8, 2004 Protective Order has governed all information
produced (and designated as Confidential or Confidential-Attorneys' Eyes Only) by The Coe
Manufacturing Company or Brian Esher in this action.

1 3. Designation of Information. Any party may designate as "Confidential" or
 2 "Confidential–Attorneys' Eyes Only" any documents or other materials that the designating party
 3 and its counsel reasonably believe contain or reflect Confidential Information or Confidential–
 4 Attorneys' Eyes Only Information. The designation of documents or other materials shall be
 5 made by written notice in the documents or materials designated. The designation of portions of
 6 testimony shall be made on the record and/or promptly after receipt of a transcript thereof by the
 7 designating party. The non-designating party may challenge any designation of confidentiality in
 8 accordance with Paragraph 9.

9 Within ten days of the entry of this Order, any party may serve a notice of designation of
 10 "Confidential" or "Confidential–Attorneys' Eyes Only" material with respect to any materials
 11 produced or filed prior to the entry of this Order that were not so designated.

12 4.a. Use and Access of Confidential Information. Except upon the Court's further
 13 order or by express written consent of counsel of record, any Confidential Information furnished
 14 in this action by any of the parties, entities, or individuals referred to in the introductory
 15 paragraph herein shall be used by the receiving party solely for purposes of prosecuting or
 16 defending this action and shall not be disclosed to any persons other than:

17 (i) the attorneys for the parties in this proceeding and to other attorneys,
 18 paralegals, law clerks, clerical staff, and document vendors working with those attorneys;

19 (ii) officers or employees of the parties to the extent necessary to defend or
 20 prosecute this action;

21 (iii) experts or consultants retained or employed by any party for the purposes
 22 of this action, provided that said experts or consultants have executed a certification in
 23 accordance with Paragraph 5 below;

24 (iv) any court reporter or typist recording or transcribing testimony in this
 25 action; and

26 (v) other persons who may be specifically designated by consent of all
 27 attorneys of record or pursuant to an order of the Court.

28 4.b. Use and Access of Confidential–Attorneys' Eyes Only Information.

1 The above paragraph 4.a., except for subparagraph 4. a. (ii) above, also governs the use
 2 and disclosure of Confidential–Attorneys' Eyes Only Information. Except upon the Court's
 3 further order or by express written consent of counsel of record, any Confidential–Attorneys'
 4 Eyes Only Information furnished under this Order shall not be disclosed to any party or its/his
 5 officers or employees.

6 5. Certification of Confidentiality. All persons referred to in paragraph 4.a.(iii) to
 7 whom material covered by this Order is made available shall agree in writing to the following
 8 certification:

9 I certify my understanding that documents, information,
 10 testimony, answers, and responses provided by
 11 Plaintiffs/Counterdefendants Ronald McGehee or McGehee
 12 Development Company LLC or Counterdefendant Patrick Doyle, or
 13 by Defendants/Counterclaimants Coe Newnes/McGehee ULC, The
 14 Coe Manufacturing Company, or Brian Esher, are provided to me
 pursuant to the terms and restrictions of the Court's Revised
 Protective Order of _____, 2005 in *Ronald McGehee, et al. v.*
Coe Newnes/McGehee ULC, Case No. C-03-5145 MJJ ("Order"). I
 have been given a copy and have read that Order.

15 I understand that such information and documents, and any
 16 copies, any notes or other memoranda regarding information in
 such documents, shall not be disclosed to others except in
 accordance with that Order, and shall be used only for purposes of
 this proceeding.

17 I wish to join and agree to be bound by the terms of that
 18 Order, and I submit to the jurisdiction of the United States District
 Court for the Northern District of California for the purpose of
 enforcing that Order.

19 6. Safeguarding Information. The recipient of any Confidential Information or
 20 Confidential–Attorneys' Eyes Only Information provided pursuant to this Order shall maintain
 21 such information in a secure and safe area and shall exercise due and proper care with respect to
 22 its storage, custody and use.

23 7. Service and Filing Procedures. All Confidential or Confidential–Attorneys' Eyes
 24 Only Information served on the opposing party shall be designated as "Confidential" or
 25 "Confidential–Attorneys' Eyes Only" in accordance with Paragraph 3. All Confidential or
 26 Confidential–Attorneys' Eyes Only Information filed with the Court shall be designated as
 27 "Confidential" or "Confidential–Attorneys' Eyes Only" in accordance with Paragraph 3 and shall
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1 be lodged with a request to file under seal in accordance with Northern District of California Civil
2 Local Rule 79-5.

3 8. Final Disposition. Within sixty days after the conclusion of this action, including
4 any appeals, all Confidential Information and Confidential–Attorneys' Eyes Only Information
5 furnished pursuant to the terms of this Order, any notes reflecting that Information and all copies
6 thereof, which are not in the custody of the Court, shall be returned to the party furnishing that
7 Information or be destroyed (and certified by affidavit as having been destroyed) by the party in
8 possession thereof, provided that counsel for the parties may retain attorney work product
9 materials.

10 9. Challenging Confidential or Confidential–Attorneys' Eyes Only Designation. If a
11 party opposes the designation of any particular document designated as "Confidential" or
12 "Confidential–Attorneys' Eyes Only," the parties must follow Magistrate Judge James's standing
13 orders for discovery disputes and shall attempt to resolve the dispute by meeting and conferring in
14 person. If the parties are unable to resolve the dispute by agreement, then the parties shall submit
15 a joint letter to Magistrate Judge James of no more than five (5) pages discussing the dispute.
16 The letter should specify in detail how the contested designation impairs plaintiff's ability to
17 prosecute his case and the damages that defendant anticipates from disclosing the information.
18 The burden remains on the designating party to demonstrate that the material in question contains
19 Confidential Information or Confidential–Attorneys' Eyes Only Information as described in
20 Paragraph 2 of this Order. All materials designated "Confidential" or "Confidential–Attorneys'
21 Eyes Only" shall be treated as prescribed in this Order during the meet and confer process and
22 while any motion regarding the designation of such materials is pending.

23 10. Modification of Order. Nothing in this Order shall preclude any party from
24 applying to the Court for an appropriate modification of this Order; provided, however, that
25 before such an application, the parties involved shall make a good faith effort to resolve the
26 matter by meeting and conferring. Further, the parties can agree, without Court approval, on the
27 exclusion of particular information, documents, answers, or responses from the scope of this
28 Order. The parties hereto reserve all rights to apply to the Court for an order (i) modifying this

1 Order; (ii) seeking further protection against discovery or other use of Confidential Information or
 2 Confidential–Attorneys' Eyes Only Information or documents, transcripts, or other materials
 3 reflecting such Information; or (iii) seeking further production, discovery, disclosure or use of
 4 claimed Confidential or Confidential–Attorneys' Eyes Only Information and/or documents,
 5 transcripts, or other materials reflecting such Information.

6 11. Inadvertent Production. The inadvertent production pursuant to discovery by any
 7 party of any document or communication that is protected by privilege, work product doctrine or
 8 statutory confidentiality will not operate as a waiver of the producing party's right to assert a
 9 defense to production of that document or communication, or any other document or
 10 communication, and any such material shall be returned promptly to the party producing it on
 11 written demand identifying the specific document(s).

12 12. Continuing Jurisdiction. This Order shall remain in full force and effect after the
 13 termination of this litigation. In addition, the Court shall retain jurisdiction over the parties, their
 14 attorneys, and all other persons to whom Confidential or Confidential–Attorneys' Eyes Only
 15 Information has been disclosed for the purposes of enforcing the terms of this Order and/or
 16 redressing any violations thereof until ninety (90) days after the final disposition of this action,
 17 including any appeals.

18 13. Enforcement. Other than an action pursuant to Paragraphs 3 and 9 challenging a
 19 designation of confidentiality, should any party resort to legal action in a court of law in order to
 20 enforce rights under this Order, then the prevailing party in such action shall be entitled to an
 21 award of all reasonable costs incurred, including attorneys' fees.

22
 23 IT IS SO ORDERED.

24 Dated: June 22, 2005



1 APPROVED AS TO FORM.

2 Dated: June 16, 2005

STEPTOE & JOHNSON LLP

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4 By: 

J. William Koegel, Jr. (*pro hac vice*)

W. Chelsea Chen

Attorneys for Defendants/Counterclaimants
COE NEWNES/McGEHEE ULC, THE COE
MANUFACTURING COMPANY, and
BRIAN ESHER

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8 Dated: June 15, 2005

COBLENTZ, PATCH, DUFFY & BASS, LLP

9
10 By: 

HOWARD SLAVITT

Attorneys for Plaintiffs/Counterdefendants
RONALD W. McGEHEE and McGEHEE
DEVELOPMENT COMPANY LLC and
Counterdefendant PATRICK DOYLE